

December 2006. *See* Order No. R5-2006-0124. The issues raised in this petition were raised in timely written comments and direct testimony.

1. NAME AND ADDRESS OF THE PETITIONERS:

California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, California 95204
Attention: Bill Jennings, Executive Director

2. THE SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD WHICH THE STATE BOARD IS REQUESTED TO REVIEW AND A COPY OF ANY ORDER OR RESOLUTION OF THE REGIONAL BOARD WHICH IS REFERRED TO IN THE PETITION:

Petitioner seeks review of Order No. R5-2006-0124, Waste Discharge Requirements (NPDES No. CA0081311) for Valley Waste Disposal Company and Cawelo Water District, Kern Front No. 2 Treatment Plant – Cawelo Reservoir B. Copies of the orders adopted by the Regional Board at its 7 December 2006 Board meeting are attached hereto as Attachments A.

3. THE DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO ACT OR ON WHICH THE REGIONAL BOARD WAS REQUESTED TO ACT:

7 December 2006

4. A FULL AND COMPLETE STATEMENT OF THE REASONS THE ACTION OR FAILURE TO ACT WAS INAPPROPRIATE OR IMPROPER:

CSPA submitted a detailed comment letter on 5 September 2006. This letter, the following comments and oral remarks presented during the 7 December 2006 public hearing set forth in detail the reasons and points and authorities why CSPA believes the Order fails to comport with statutory and regulatory requirements. The specific reasons the adopted Orders are improper are:

The Order contains the following statement: “Dramatic increases in the price of crude oil over the past several years have made it economically feasible for Oxy to employ steam more extensively in its oil extraction operations. Use of steam tends to leach salts such as boron and chlorides out of the formations, and increases the EC of produced water. Oxy’s use of steaming will increase the overall volume of produced water discharged to VWDC and will increase the salinity and concentrations of boron and chlorides in produced water discharged to VWDC.” The Order proposes to relax effluent limitations and increase the mass of pollutants discharged to surface waters rather than requiring an increased level of treatment. The Order does not discuss priority pollutants and only contains unsupported, undocumented conclusory statements totally lacking in factual analysis with regard to antidegradation.

- A. The Discharger has submitted an incomplete RWD and in accordance with Federal Regulations 40 CFR 122.21 (e) and 122.4 the Regional Board should not have adopted an incomplete and non-protective Order.

Federal Regulation, 40 CFR 122.21(e) states in part that: “The Director shall not issue a permit before receiving a complete application for a permit except for NPDES general permits. An application for a permit is complete when the Director receives an application form and any supplemental information which are completed to his or her satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.” Federal Regulation, 40 CFR 122.21(g)(7) requires for existing manufacturing, commercial or mining facilities that a significant list of priority pollutants be sampled to characterize the effluent discharge. The California Toxics Rule (CTR)(40 CFR 131, Water Quality Standards) contains water quality standards applicable to this wastewater discharge. The final due date for compliance with CTR water quality standards for all wastewater dischargers in California is May 2010. The State’s Policy for Implementation of Toxics standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP), Section 1.2, requires wastewater dischargers to provide all data and other information requested by the Regional Board before the issuance, reissuance, or modification of a permit to the extent feasible. There is no information in the Order that discusses priority pollutant (CTR and NTR) sampling. It appears that the Discharger did not submit a characterization of the wastewater discharge in terms of priority pollutants. There is also no information the Order fact sheet that adequately discusses a reasonable potential analysis in accordance with Federal Regulation 40 CFR 122.44. The application for permit renewal is incomplete and in accordance with 40 CFR 122.21(e) the Regional Board should not issue a permit.

- B. The permit does not require best practicable control technology (BPT) as required by Federal Regulations 40 CFR 125.3 by failing to include a protective Effluent Limitation for Oil and Grease.

The Order states that: “VWDC receives wastewater from facilities subject to 40 CFR § 435.50, Oil and Gas Extraction Point Source Category, Agricultural and Wildlife Water Use Subcategory. These facilities have a daily maximum oil and grease limitation of 35 mg/L. The Board has determined, based on Best Professional Judgment (BPJ), that daily maximum effluent limitations for oil and grease are necessary for the protection of water quality and shall be consistent with limitations imposed on facilities discharging wastewaters to VWDC. Effluent limitations for oil and grease are included in this Order and are technology-based limitations based on BPJ.” The Order then prescribes an Effluent Limitation of 35 mg/l for oil and grease with a mass limitation of 2160 pounds per day.

The permit does not require best practicable control technology (BPT) as required by Federal Regulations 40 CFR 125.3. 40 CFR 125.3 requires that: “Technology-based treatment requirements under section 301(b) of the Act represent the minimum level of

control that must be imposed in a permit issued under section 402 of the Act. Permits shall contain the following technology-based treatment requirements in accordance with the following statutory deadlines; (2) For dischargers other than POTWs except as provided in 122.29(d), effluent limitations requiring: (i) The best practicable control technology currently available.” Treatment system for clean-up projects routinely achieve non-detectable concentrations of petroleum based oil and grease. The technology to achieve non-detectable levels of petroleum based oil and grease is currently available and is in wide use throughout the regulated community.

U.S. EPA’s ambient criteria for the protection of freshwater aquatic life recommends that limitations be established at 0.01 of the lowest continuous flow 96-hour LC50 to several important freshwater and marine species, each having a demonstrated high susceptibility to oils and petrochemicals; surface waters shall be virtually free from floating nonpetroleum oils of vegetable or animal origin, as well as petroleum derived oils. The Basin Plan narrative water quality objective for toxicity allows use of U.S. EPA’s ambient criteria to establish effluent limitations.

The effluent limitation for oil and grease, as currently proposed threatens to violate the Receiving Water limitation which prohibits the discharge from causing: “Oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.”

- C. The Order “backslides” on Effluent Limitations for Conductivity (EC), Chloride and Boron contrary to Federal Regulations 40 CFR 122.44(l)(2)(i)(A) and 40 CFR 122.44(l)(2)(i)(C).

WDRs Order No. 96-009 requires that the conductivity of the discharge not exceed a daily maximum of 1,200 μ mhos/cm and a monthly average of 1,100 μ mhos/cm. The effluent limitations for electrical conductivity are being increased to a daily maximum of 1,300 μ mhos/cm and a monthly average of 1,250 μ mhos/cm.

WDRs Order No. 96-009 contains monthly average limitations for chloride of 80 mg/L and daily maximum limitations of 100 mg/L. The Discharger’s RWD requests raising the limitations for chloride based on the quality of wastewater entering VWDC’s treatment system. This Order contains effluent limitations for chloride of 100 mg/L and 6170 lbs/day (monthly average) and 125 mg/L and 7713 lbs/day (daily maximum).

Order No. 96-009 contains monthly average limitations for boron of 1.0 mg/L and daily maximum limitations of 1.2 mg/L respectively. The Discharger’s RWD requests raising the limitations for boron based on the quality of wastewater entering VWDC’s treatment system. This Order contains effluent limitations for boron of 1.5 mg/L and 92.6 lbs/day (monthly average) and 1.6 mg/L and 98.7 lbs/day (daily maximum).

The Order allows an increase in concentration and mass for EC, Chloride and Boron. The Order states that: “The permitted discharge is consistent with the

antidegradation provisions of 40 CFR 131.12 and Resolution 68-16. Compliance with these requirements will result in the use of best practicable treatment or control of the discharge. Resolution 68-16 requires the Regional Water Board in regulating the discharge of wastes, to maintain high quality waters of the State, not unreasonably affect beneficial uses, and will not result in water quality less than that described in the Regional Water Board's policies (e.g., quality that exceeds water quality objectives)." Other than unsupported statements with regard to Antibacksliding and Antidegradation the Order is silent; there is no antidegradation analysis.

The Order states that: "The anti-backsliding provisions contained in 40 CFR § 122.44(l) allow a renewed NPDES permit to contain less stringent limitations under certain circumstances. In particular, 40 CFR § 122.44(l)(2)(i)(C) allows a renewed NPDES permit to contain a less stringent effluent limitation when it is "necessary because of events over which the permittee has no control and for which there is no reasonably available remedy." Since VWDC has no control over Oxy's decision to use steaming to enhance oil extraction, and since Oxy's use of steaming will increase the levels of EC, boron, and chloride in the produced water received by VWDC, it is consistent with anti-backsliding provisions of 40 CFR 122.44(l) to allow an increase in the Discharger's effluent limitations for EC, boron, and chloride. Furthermore, 40 CFR § 122.44(l)(2)(i)(A) allows a renewed NPDES permit to contain a less stringent effluent limitation when "material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent limit." Oxy's use of steam injection to aid in oil extraction (Finding No. 4) represents a substantial alteration to its permitted facility, which justifies the application of less stringent effluent limits for EC, boron, and chloride. Steaming will increase the levels of EC, boron, and chloride in Oxy's effluent, and there is no effective treatment to reduce the resulting elevated levels of salts in the effluent. Oxy's effluent comprises approximately 80% of the produced water received by VWDC. Therefore, changes in the quality of Oxy's effluent will directly impact the quality of VWDC's effluent."

The Regional Board has misinterpreted the Antibacksliding provisions of the Federal regulations in preparing the Order. In discussing permitted facilities Federal Regulations 40 CFR 122.44(l)(2)(i)(A) allows a renewed NPDES permit to contain a less stringent effluent limitation when "material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent limit" However, the "permitted facility" being referenced is the treatment plant not the industrial process of extracting oil from the ground.

The Regional Board further states that 40 CFR 122.44(l)(2)(i)(C) allows a renewed NPDES permit to contain a less stringent effluent limitation when it is "necessary because of events over which the permittee has no control and for which there is no reasonably available remedy", and "...VWDC has no control over Oxy's decision to use steaming to enhance oil extraction, and since Oxy's use of steaming will increase the levels of EC, boron, and chloride in the produced water received by VWDC..." Oxy is an industry discharging to VWDC. If Oxy does not comply with the terms of discharge, VWDC can simply stop accepting the wastestream from OXY. To state that backsliding

is allowed because under these circumstances is not only a misinterpretation of the intent of the regulations, but is an absurdity. Ant and all effluent limitations that have been relaxed in the Order must be revised to be at least as stringent as was contained in the existing WDR.

- D. The Order contains an inadequate Antidegradation Policy analysis contrary to federal regulations, state law and state guidance.

The antidegradation analysis in the Order is not simply deficient: it is literally nonexistent. The brief discussion of antidegradation requirements, in the Findings and Fact Sheet, consist only of skeletal, unsupported, undocumented conclusory statements totally lacking in factual analysis. The failure to undertake a rigorous antidegradation analysis for a new “major” discharge of is appalling. Regional Board staff are either unaware of state and federal policies regarding antidegradation analyses or they have been directed to ignore them.

Section 101(a) of the Clean Water Act, the basis for the antidegradation policy, states that the objective of the Act is to “restore and maintain the chemical, biological and physical integrity of the nation’s waters.” Section 303(d)(4) of the Act carries this further, referring explicitly to the need for states to satisfy the antidegradation regulations at 40 CFR § 131.12 before taking action to lower water quality. These regulations describe the federal antidegradation policy and dictate that states must adopt both a policy at least as stringent as the federal policy as well as implementing procedures. (40 CFR § 131.12(a).)

California’s antidegradation policy is composed of both the federal antidegradation policy and the State Board’s Resolution 68-16. (State Water Resources Control Board, Water Quality Order 86-17, p. 20 (1986) (“Order 86-17”); Memorandum from William Attwater, SWRCB to Regional Board Executive Officers, “federal Antidegradation Policy,” pp. 2, 18 (Oct. 7, 1987) (“State Antidegradation Guidance”).) As part of the state policy for water quality control, the antidegradation policy is binding on all of the Regional Boards. (Water Quality Order 86-17, pp. 17-18.) Implementation of the state’s antidegradation policy is guided by the State Antidegradation Guidance, SWRCB Administrative Procedures Update 90-004, 2 July 1990 (“APU 90-004”) and USEPA Region IX, “Guidance on Implementing the Antidegradation Provisions of 40 CFR 131.12” (3 June 1987) (“Region IX Guidance”), as well as Water Quality Order 86-17.

The Regional Board must apply the antidegradation policy whenever it takes an action that will lower water quality. (State Antidegradation Guidance, pp. 3, 5, 18, and Region IX Guidance, p. 1.) Application of the policy does not depend on whether the action will actually impair beneficial uses. (State Antidegradation Guidance, p. 6. Actions that trigger use of the antidegradation policy include issuance, re-issuance, and modification of NPDES and Section 404 permits and waste discharge requirements, waiver of waste discharge requirements, issuance of variances, relocation of discharges, issuance of cleanup and abatement orders, increases in discharges due to industrial

production and/or municipal growth and/other sources, exceptions from otherwise applicable water quality objectives, etc. (State Antidegradation Guidance, pp. 7-10, Region IX Guidance, pp. 2-3.) Both the state and federal policies apply to point and nonpoint source pollution. (State Antidegradation Guidance p. 6, Region IX Guidance, p. 4.)

The federal antidegradation regulations delineate three tiers of protection for waterbodies. Tier 1, described in 40 CFR § 131.12(a)(1), is the floor for protection of all waters of the United States. (48 Fed. Reg. 51400, 51403 (8 Nov. 1983); Region IX Guidance, pp. 1-2; APU 90-004, pp. 11-12.) It states that “[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.” Uses are “existing” if they were actually attained in the water body on or after November 28, 1975, or if the water quality is suitable to allow the use to occur, regardless of whether the use was actually designated. (40 CFR § 131.3(e).) Tier 1 protections apply even to those waters already impacted by pollution and identified as impaired. In other words, already impaired waters cannot be further impaired.

Tier 2 waters are provided additional protections against unnecessary degradation in places where the levels of water quality are better than necessary to support existing uses. Tier 2 protections strictly prohibit degradation unless the state finds that a degrading activity is: 1) necessary to accommodate important economic or social development in the area, 2) water quality is adequate to protect and maintain existing beneficial uses, and 3) the highest statutory and regulatory requirements and best management practices for pollution control are achieved. (40 CFR § 131.12(a)(2).) Cost savings to a discharger alone, absent a demonstration by the project proponent as to how these savings are “necessary to accommodate important economic or social development in the area,” are not adequate justification for allowing reductions in water quality. (Water Quality Order 86-17, p. 22; State Antidegradation Guidance, p. 13.) If the waterbody passes this test and the degradation is allowed, degradation must not impair existing uses of the waterbody. (48 Fed. Reg. at 51403). Virtually all waterbodies in California may be Tier 2 waters since the state, like most states, applies the antidegradation policy on a parameter-by-parameter basis, rather than on a waterbody basis. (APU 90-004, p. 4). Consequently, a request to discharge a particular chemical to a river, whose level of that chemical was better than the state standards, would trigger a Tier 2 antidegradation review even if the river was already impaired by other chemicals.

Tier 3 of the federal antidegradation policy states “[w]here high quality waters constitute an outstanding national resource, such as waters of national and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water shall be maintained and protected. (40 CFR § 131.12(a)(3).) These Outstanding National Resource Waters (ONRW) are designated either because of their high quality or because they are important for another reason. (48 Fed. Reg. At 51403; State Antidegradation Guidance, p. 15). No degradation of water quality is allowed in these waters other than short-term, temporary changes. (Id.) Accordingly, no new or increased discharges are allowed in either ONRW or tributaries to ONRW that would result in lower water quality in the ONRW. (EPA Handbook, p. 4-10; State Antidegradation

Guidance, p. 15.) Existing antidegradation policy already dictates that if a waterbody “should be” an ONRW, or “if it can be argued that the waterbody in question deserves the same treatment [as a formally designated ONRW],” then it must be treated as such, regardless of formal designation. (State Antidegradation Guidance, pp. 15-16; APU 90-004, p. 4.) Thus the Regional Board is required in each antidegradation analysis to consider whether the waterbody at issue should be treated as an ONRW. It should be reiterated that waters cannot be excluded from consideration as an ONRW simply because they are already “impaired” by some constituents. By definition, waters may be “outstanding” not only because of pristine quality, but also because of recreational significance, ecological significance or other reasons. (40 CFR §131.12(a)(3).) Waters need not be “high quality” for every parameter to be an ONRW. (APU 90-004, p. 4) For example, Lake Tahoe is on the 303(d) list due to sediments/siltation and nutrients, and Mono Lake is listed for salinity/TDC/chlorides but both are listed as ONRW.

The State Board’s APU 90-004 specifies guidance to the Regional Boards for implementing the state and federal antidegradation policies and guidance. The guidance establishes a two-tiered process for addressing these policies and sets forth two levels of analysis: a simple analysis and a complete analysis. A simple analysis may be employed where a Regional Board determines that: 1) a reduction in water quality will be spatially localized or limited with respect to the waterbody, e.g. confined to the mixing zone; 2) a reduction in water quality is temporally limited; 3) a proposed action will produce minor effects which will not result in a significant reduction of water quality; and 4) a proposed activity has been approved in a General Plan and has been adequately subjected to the environmental and economic analysis required in an EIR. A complete antidegradation analysis is required if discharges would result in: 1) a substantial increase in mass emissions of a constituent; or 2) significant mortality, growth impairment, or reproductive impairment of resident species. Regional Boards are advised to apply stricter scrutiny to non-threshold constituents, i.e., carcinogens and other constituents that are deemed to present a risk of source magnitude at all non-zero concentrations. If a Regional Board cannot find that the above determinations can be reached, a complete analysis is required.

Even a minimal antidegradation analysis would require an examination of: 1) existing applicable water quality standards; 2) ambient conditions in receiving waters compared to standards; 3) incremental changes in constituent loading, both concentration and mass; 4) treatability; 5) best practicable treatment and control (BPTC); 6) comparison of the proposed increased loadings relative to other sources; 7) an assessment of the significance of changes in ambient water quality and 8) whether the waterbody was a ONRW. A minimal antidegradation analysis must also analyze whether: 1) such degradation is consistent with the maximum benefit to the people of the state; 2) the activity is necessary to accommodate important economic or social development in the area; 3) the highest statutory and regulatory requirements and best management practices for pollution control are achieved; and 4) resulting water quality is adequate to protect and maintain existing beneficial uses. A BPTC technology analysis must be done on an individual constituent basis.

Any antidegradation analysis must comport with implementation requirements in State Board Water Quality Order 86-17, State Antidegradation Guidance, APU 90-004 and Region IX Guidance. The conclusory, unsupported, undocumented statements in the Permit are no substitute for a defensible antidegradation analysis.

The antidegradation review process is especially important in the context of waters protected by Tier 2. See EPA, Office of Water Quality Regulations and Standards, Water Quality Standards Handbook, 2nd ed. Chapter 4 (2nd ed. Aug. 1994). Whenever a person proposes an activity that may degrade a water protected by Tier 2, the antidegradation regulation requires a state to: (1) determine whether the degradation is “necessary to accommodate important economic or social development in the area in which the waters are located”; (2) consider less-degrading alternatives; (3) ensure that the best available pollution control measures are used to limit degradation; and (4) guarantee that, if water quality is lowered, existing uses will be fully protected. 40 CFR § 131.12(a)(2); EPA, Office of Water Quality Regulations and Standards, Water Quality Standards Handbook, 2nd ed. 4-1, 4-7 (2nd ed. Aug. 1994). These activity-specific determinations necessarily require that each activity be considered individually.

For example, the APU 90-004 states:

“Factors that should be considered when determining whether the discharge is necessary to accommodate social or economic development and is consistent with maximum public benefit include: a) past, present, and probably beneficial uses of the water, b) economic and social costs, tangible and intangible, of the proposed discharge compared to benefits. The economic impacts to be considered are those incurred in order to maintain existing water quality. The financial impact analysis should focus on the ability of the facility to pay for the necessary treatment. The ability to pay depends on the facility’s source of funds. In addition to demonstrating a financial impact on the publicly – or privately – owned facility, the analysis must show a significant adverse impact on the community. The long-term and short-term socioeconomic impacts of maintaining existing water quality must be considered. Examples of social and economic parameters that could be affected are employment, housing, community services, income, tax revenues and land value. To accurately assess the impact of the proposed project, the projected baseline socioeconomic profile of the affected community without the project should be compared to the projected profile with the project...EPA’s Water Quality Standards Handbook (Chapter 5) provides additional guidance in assessing financial and socioeconomic impacts”

There is nothing resembling an economic or socioeconomic analysis in the Permit. There are viable alternatives that have never been analyzed. The Discharger could continue with complete land disposal and install micro-filtration treatment equipment. The evaluation contains no comparative costs. As a rule-of-thumb, USEPA recommends that the cost of compliance should not be considered excessive until it consumes more than 2% of disposable household income in the region. This threshold is meant to suggest more of a floor than a ceiling when evaluating economic impact. In the

Water Quality Standards Handbook, USEPA interprets the phrase “necessary to accommodate important economic or social development” with the phrase “substantial and widespread economic and social impact.”

The antidegradation analysis must discuss the relative economic burden as an aggregate impact across the entire region using macroeconomics. Considering the intrinsic value of the surface water to the entire state and the potential effects upon those who rely and use surface waters, it must also evaluate the economic and social impacts to water supply, recreation, fisheries, etc. from the Discharger’s degradation of water quality. It is unfortunate that the agency charged with implementing the Clean Water Act has apparently decided it is more important to protect the polluter than the environment.

There is nothing in the Permit resembling an alternatives analysis evaluating less damaging and degrading alternatives. Unfortunately, the Permit fails to evaluate and discuss why there is no alternative other than discharging to surface waters. A proper alternatives analysis would cost out various alternatives and compare each of the alternatives’ impacts on beneficial uses.

There is nothing in the Permit resembling an analysis that ensures that existing beneficial uses are protected. Nor does the Permit analyze the incremental and cumulative impact of increased loading of non-impairing pollutants on beneficial uses. In fact, there is almost no information or discussion on the composition and health of the identified beneficial uses. Any reasonably adequate antidegradation analysis must discuss the affected beneficial uses (i.e., numbers and health of the aquatic ecosystem; extent, composition and viability of agricultural production; people depending upon these waters for water supply; extent of recreational activity; etc.) and the probable effect the discharge will have on these uses.

The State Board has clearly articulated its position on increased mass loading of pollutants. In Order WQ 90-05, the Board directed the San Francisco Regional Board on the appropriate method for establishing mass-based limits that comply with state and federal antidegradation policies. That 1990 order stated “[I]n order to comply with the federal antidegradation policy, the mass loading limits should also be revised, based on mean loading, concurrently with the adoption of revised effluent limits. The [mass] limits should be calculated by multiplying the [previous year’s] annual mean effluent concentration by the [four previous year’s] annual average flow. (Order WQ 90-05, p. 78). USEPA points out, in its 12 November 1999 objection letter to the San Francisco Regional Board concerning Tosco’s Avon refinery, that ‘[a]ny increase in loading of a pollutant to a water body that is impaired because of that pollutant would presumably degrade water quality in violation of the applicable antidegradation policy.’”

- E. The Order allows Acute Toxicity in the discharge contrary to Federal Regulations and at a level exceeding the Basin Plan water quality objective for toxicity.

Federal regulations, at 40 CFR 122.44 (d)(1)(i), require that limitations must control all pollutants or pollutant parameters which the Director determines are or may be discharged at a level which will cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality. The Basin Plan objective for Toxicity is a narrative criteria which states that all waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life. This section of the Basin Plan further states, in part that, compliance with this objective will be determined by analysis of indicator organisms. However, the Tentative Permit contains a discharge limitation that allows 30% mortality (70% survival) of fish species in any given toxicity test.

For an ephemeral or low flow stream, allowing 30% mortality in acute toxicity tests allows that same level of mortality in the receiving stream, in violation of federal regulations and contributes to exceedance of the Basin Plan's narrative water quality objective for toxicity. Accordingly, the Order should be revised to prohibit acute toxicity.

- F. The Order fails to contain an Effluent Limitation for chronic toxicity contrary to Federal Regulations and at a level exceeding the Basin Plan water quality objective for toxicity.

Federal regulations, at 40 CFR 122.44 (d)(1)(i), require that limitations must control all pollutants or pollutant parameters which the Director determines are or may be discharged at a level which will cause, or contribute to an excursion above any State water quality standard, including state narrative criteria for water quality. The Basin Plan Objective for Toxicity is a narrative criteria which states that all waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life. The Tentative Permit states that: "...to ensure compliance with the Basin Plan's narrative toxicity objective, the discharger is required to conduct whole effluent toxicity testing...". However, sampling does not equate with or ensure compliance. An effluent limitation for chronic toxicity must be included in the Order.

5. THE MANNER IN WHICH THE PETITIONERS ARE AGGRIEVED.

CSPA is a non-profit, environmental organization that has a direct interest in reducing pollution to the waters of the Central Valley. CSPA's members benefit directly from the waters in the form of recreational hiking, photography, fishing, swimming, hunting, bird watching, boating, consumption of drinking water and scientific investigation. Additionally, these waters are an important resource for recreational and commercial fisheries.

Central Valley waterways also provide significant wildlife values important to the mission and purpose of the Petitioners. This wildlife value includes critical nesting and feeding grounds for resident water birds, essential habitat for endangered species and

other plants and animals, nursery areas for fish and shellfish and their aquatic food organisms, and numerous city and county parks and open space areas.

CSPA's members reside in communities whose economic prosperity depends, in part, upon the quality of water. CSPA has actively promoted the protection of fisheries and water quality throughout California before state and federal agencies, the State Legislature and Congress and regularly participates in administrative and judicial proceedings on behalf of its members to protect, enhance, and restore declining aquatic resources.

CSPA member's health, interests and pocketbooks are directly harmed by the failure of the Regional Board to develop an effective and legally defensible program addressing discharges to waters of the state and nation.

6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH PETITIONER REQUESTS.

Petitioners seek an Order by the State Board to:

Vacate Order No. R5-2006-0124 (NPDES No. CA0081311) and remand to the Regional Board with instructions prepare and circulate a new tentative order that comports with regulatory requirements.

Petitioners, however, request that the State Board hold in abeyance further action on this Petition for up to two years or further notice by Petitioners, whichever comes first. Petitioners, along with other environmental groups, anticipate filing one or more additional petitions for review challenging decisions by the Regional Board concerning the issues raised in this Petition in the coming months. For economy of the State Board and all parties, Petitioners will request the State Board to consolidate these petitions and/or resolve the common issues presented by these petitions by action on a subset of the petitions. Accordingly, Petitioners urge that holding this Petition in abeyance for now is a sensible approach.

7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES RAISED IN THE PETITION.

CSPA's arguments and points of authority are adequately detailed in the above comments, our 5 September 2006 comment letter that was accepted into the record and our oral testimony presented to the Regional Board on 7 December 2006. Should the State Board have additional questions regarding the issues raised in this petition, CSPA will provide additional briefing on any such questions.

The petitioners believe that an evidentiary hearing before the State Board will not be necessary to resolve the issues raised in this petition. However, CSPA welcomes the opportunity to present oral argument and respond to any questions the State Board may have regarding this petition.

8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE APPROPRIATE REGIONAL BOARD AND TO THE DISCHARGERS, IF NOT THE PETITIONER.

A true and correct copy of this petition, without attachment, was sent electronically and by First Class Mail to Ms. Pamela Creedon, Executive Officer, Regional Water Quality Control Board, Central Valley Region, 11020 Sun Center Drive #200, Rancho Cordova, CA 95670-6114.

A true and correct copy of this petition, without attachment, was sent to the Discharger in care of Mr. Larry S. Bright, Manager, Valley Waste Disposal Company, 7500 Meany Avenue, Bakersfield, CA 93308 and Mr. R. L. Schafer, Cawelo Water District, 17207 Industrial Farm Road, Bakersfield, CA 93308-9519.

9. A STATEMENT THAT THE ISSUES RAISED IN THE PETITION WERE PRESENTED TO THE REGIONAL BOARD BEFORE THE REGIONAL BOARD ACTED, OR AN EXPLANATION OF WHY THE PETITIONER COULD NOT RAISE THOSE OBJECTIONS BEFORE THE REGIONAL BOARD.

CSPA presented the issues addressed in this petition to the Regional Board in live oral testimony at the 7 December 2006 hearing on the Order or in comments submitted to the Regional Board on 5 September 2006 that were accepted into the record.

If you have any questions regarding this petition, please contact Bill Jennings at (209) 464-5067 or Mike Jackson at 530-283-1007.

Dated: 8 January 2007

Respectfully submitted,



Bill Jennings, Executive Director
California Sportfishing Protection Alliance

Attachments:

- A. Order No. R5-2006-0124